HRM 510 Wrongful Termination

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Human resource departments are of crucial importance in any organization because they are responsible for providing the best available human talent to the rest of the departments. Along with many critical responsibilities of a human resource manager is to terminate or fire an existing employee. There can be multiple scenarios leading to employee lay-offs and terminations (Wolf, 2019). The paper discusses the legal restrictions and policies compliance for the cases where the employees are being terminated on the basis of their performance and behavioral conduct at the workplace. Laying-off a large number of employees at the time of filing bankruptcies for particular organizations but terminating the services of an employee in a progressing business is not an easy task.

 Firing an employee is a decision that is not concluded immediately or in a hurry. It involves various legal perspectives as well. In case of a loyal and experienced employee, the decision of termination is even harder as compared to the terminations involving fresh talent. There are a lot of investments involved in preparing the employee to fit particular business requirements, and sudden terminations of such employees will not be welcomed by their colleagues. Such actions can intrigue other fellows to adopt illegal methods in support of their colleague as well (Macpherson & Stephenson, 2016). One of the legal complexities involved in the termination of an employee is known as constructive discharge. Constructive discharge is referred to as the situation when an employer intentionally makes the working conditions worse for a particular employee. The situation is made so cruel for the individual that there are no options left for the employee other than resignation. Employers can use the tactics of constructive discharge to obtain forceful resignations from their employees.

 Constructive discharge is similar to the wrongful termination in a way that an employer can violate the terms and conditions of an agreement to get rid of a particular employee. Although constructive discharge is a nefarious activity that must not be practiced by organizations, the concept of constructive discharge is recognized by most states as a legal concept. It is recognized legally because the employee quit the job due to the behavior of an employer (Howell, 2018). It has a legal basis because such forced resignations are considered direct terminations due to the fact that the employee was not left with any other reasonable option to continue the job. Therefore, in such conditions, even the employee has reigned it will be considered as the wrongful firing of the employee. Organizations may face lawsuits regarding such constructive discharges.

 On the other hand, such legal backing of the constructive discharge may also urge the employee to file false cases against their employer based on personal preferences. Therefore, an employee cannot simply quit the job and claim compensation for constructive discharge. For claims of constructive discharge, an employee is required to prove that the working environment was extremely unfair to compel for a resignation. Further, the employee must also prove that the employer was either aware of the intolerable working conditions or has intentionally made the conditions worse. In claims of the constructive discharge filed by the employees, the courts will look for several aspects (Hawkins, 2018). Investigations may include that whether the employer forced the employee to participate in illegal activity or the employer tried to rectify the issues. The courts will also access the time between the initiation of severe actions of the employer and the resignation by the employee. It will be hard for the employee to prove that his perception of intolerable working conditions is not subjective. In this way, laws provide protection to organizations and employees as well.

 As discussed above it involves a significant investment in training an employee to fit the particular needs of the business. Therefore, employers can bind the employees by contracts to not leave the job unless stipulated conditions are met. One similar concept is the use of employment at will. Employment at will entitles the employer with the powers that the employee can be terminated at any point in time without stating any reason for termination or without the issuance of a single warning (Hawkins, 2017a). Employment at will contracts may help employers in certain ways, but the employees also have rights protected by state and federal laws. Therefore, exceptions to the employment at will contracts exist in a broad spectrum. Most of the employees in the United States are covered by the employment at will contracts according to which they can be terminated any time for any reason or for no reason at all. Employment at will contracts also allows the employer to change working conditions for the employees without any prior notice to them.

 However, exceptions to the employment contracts provide employees with the protection of their rights where they are protected by state or federal laws or by collective bargaining agreements or public policies. Not all of the employees are subject to employment at will contracts. Most of the time when employees accept their job offer letters, the rules or terms and conditions of the employment may be stated in the letter or employee handbook of the company stating exceptions to the employment at will (Hawkins, 2017b). Employees may be covered under other types of stripped down versions of employment at will agreements usually supplied with job offer letters. Employees having coverage by the union agreements often know about the conditions that can result in their employment termination. Usually, such agreements stipulate that the employees can only be terminated due to some valid reason governed by the rules of the employee union or agreement also known as the collective bargain.

 Company policies can state the rules and conditions according to which the employment contracts of the employees can be terminated. A good company policy to avoid any severe legal consequences would be to detail the complete procedure of employee termination including the warning life cycle. Most of the time organizations follow the warning card approach to avoid any legal consequences. For example, a first oral warning may be issued at the first mistake with a light tone. The second oral warning can be issued with a harsh tone. After the oral warnings if the issue is not taken seriously then first written warning with a lighter tone can be issued (Baum, 2015). Finally, a second written warning with a harsh tone can be issued to the employee leading to the termination of the contract. Some organizations may follow a time-based warning system such as the first yellow card warning for two weeks of improvement. Second yellow card warning with a single week of improvement time allowed and finally a red card warning leading to the termination of the contract with the employee.

 Public policies can also protect employees from wrongful terminations and put restrictions on employers as well. For example, employers can be restricted by the public policies not to fire an employee who has filed a claim for compensation. Public policies can also protect employees rejecting the violation of laws while performing their duties against wrongful termination. Public policies clearly define the protections for the employees engaging in roles of public interest such as serving in the military. Many courts of law, almost in eleven states of the United States protect employees from wrongful discharge (McGinley & Buonocore Porter, 2017). Employees can file lawsuits if they believe that their termination was not just. Although employers can be legally permitted to practice employment at will, they give due respect to the opinion of their employees as well. It is because if an employer has developed a reputation of wrongfully terminating employees will face severe difficulties in retaining top performing employees in the company.

 Therefore, careful actions are inevitable by human resource managers in every organization to maintain a good reputation and loyalty of employees. Higher turnover rates of employees due to poor handling of concerns of employees regarding working conditions will put a substantial financial burden on the business. Such burdens often lead to lower revenue streams and reputation loss. Having a poor reputation in employee handling not only reduce the revenue stream and business growth but also provide the competitors in the same market to outperform the business. Appropriate warning mechanisms for employee terminations must be followed such as yellow card warnings or oral and written warning approach. Oral and written warning approach is best utilized by project managers. For long-term employees, the yellow card warning mechanisms are more appropriate as compared to the others. Organizations carefully dealing with employee terminations will enjoy a competitive advantage and increased business growth. More talented people will be available to join the organization, and it will add value to the business as well. Poor handling or wrongful terminations may lead to lawsuits by employees or in severe cases of reputation loss.

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